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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/718,852	
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	First Named Inventor	Hixon et al.	
	Art Unit	3724	
	Examiner Name	S. Choi	
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ENCLOSURES (check all that apply)		
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Remarks The Commissioner is authorized to charge any additional fees required but not submitted with any document or request requiring fee payment under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account 20-1469 during pendency of this application.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	TaskBitt, P.C.		
Signature			
Printed Name	Brick G. Power		
Date	December 22, 2006	Reg. No.	38,581

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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Hixon et al.

Serial No.: 10/718,852

Filed: November 20, 2003

For: DIE CUTTING SYSTEM,
COMPONENTS THEREOF, AND
METHODS

Confirmation No.: 1905

Examiner: S. Choi

Group Art Unit: 3724

Attorney Docket No.: 2916-4842.1US

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APPEAL BRIEF

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Attn: Board of Patent Appeals and Interferences

Sir:

This APPEAL BRIEF is being submitted in the format required by 37 C.F.R.

§ 41.37(c)(1). The accompanying fee has already been paid.

(1) REAL PARTY IN INTEREST

U.S. Application Serial No. 10/718,852 (hereinafter “the ‘852 Application”), the application at issue in the above-referenced appeal, has been assigned to QuicKutz, Inc., as evidenced by the assignment that has been recorded with the U.S. Patent & Trademark Office (hereinafter “the Office”) at Reel No. 013271, Frame No. 0566. Accordingly, QuicKutz, Inc. is the real party in interest in the above-referenced appeal.

(2) RELATED APPEALS AND INTERFERENCES

The final rejections of the claims in U.S. Application Serial No. 09/864,723, filed on May 23, 2001, are currently the subject of an appeal to the Board of Patent Appeals and Interferences (hereinafter “the Board”). The Board’s review of that application may have some bearing on the Board’s decision in the above-referenced appeal.

(3) STATUS OF CLAIMS

There are currently seventy-seven (77) claims pending and under consideration in the above-referenced application.

Of these, the Examiner has withdrawn claims 1-47 and 49-60 from consideration, and has considered and finally rejected claims 48 and 61-77. The Examiner’s refusal to consider claims 1-47 and 49-60 and the final rejections of claims 48 and 61-77 are subject to this appeal.

No claims have been allowed.

(4) STATUS OF AMENDMENTS

The '852 Application was filed on November 20, 2003, with thirty-five (35) claims.

A Preliminary Amendment was mailed on July 22, 2003.

On February 26, 2004, a Petition to Make Special was filed in view of an ever-increasing number of subsequently introduced copy-cat products that would infringe the scopes of the pending claims of the '852 Application.

A first action on the merits of claims 1-35 was mailed on May 24, 2004. In that action, each of the pending claims was rejected. An Examiner's Interview was conducted on June 15, 2004, in which differences between Appellants' chemically etched die and the art were discussed, as were several features that could be included in the claims to distinguish the same over the prior art.

Following the Examiner's Interview, several revisions to the previously pending claims were presented, as were new claims 36-77—each addressing differences between the art upon which the Examiner had based his claim rejections and Appellants' chemically etched die. That Amendment was accompanied by a Declaration of Eric J. Ruff, the President and C.E.O. of QuicKutz, Inc., which detailed the commercial success of and long-felt need for the claimed apparatus. The Amendment and Declaration were sent to the Office on August 2, 2004.

That Amendment was followed by a 14-way restriction requirement, in which the Examiner admitted commonalities between seven of the groups by indicating that claim 48 would be considered if any of those seven groups was elected.

An election was made, in a Response dated March 2, 2005, to prosecute claims 61-77 of Group 14.

Although Group 14 was not one of the seven identified groups with which claim 48 would also be considered, the Examiner rejected claims 48 and 61-77 in a final Office Action dated December 2, 2004.

A Notice of Appeal was filed on January 17, 2006, and an APPEAL BRIEF was subsequently filed. A Notice of Non-Compliant Appeal Brief was sent on August 3, 2006, and is followed by this APPEAL BRIEF. As September 3, 2006, fell on a Sunday, the following Monday, September 4, 2006, was the federal Labor Day holiday, and this APPEAL BRIEF is being submitted on Tuesday, September 5, 2006, it should be deemed to have been filed within one month of the mailing date of the Notice of Non-Compliant Appeal Brief.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

While reference characters are used in the following summary to identify examples of claim elements that are shown in the drawings, it is noted that the reference characters are included merely to ensure full compliance with the requirements of 37 C.F.R. § 41.37(c)(1)(v), and that their inclusion merely points to examples in the as-filed disclosure that do not limit the scope of independent claim 1 or any other claim that remains pending in the above-referenced application. Rather, the scope of each claim is limited only by the plain language thereof, and includes the full scope of available equivalents to each recited element.

Independent claim 48 of the '852 Application is directed to a die 60 for forming a pattern 102 in a sheet of material 100. Such a die 60 includes a substantially planar plate 62 and at least one cutting edge 68 protruding from a surface 66 of the plate 62. *See, e.g.,* paragraph [0030].

As recited in claim 61, which depends from independent claim 48, the plate 62 of the die 60 may be substantially rigid. *See, e.g.*, paragraph [0035]. The plate 62 may also be configured to apply pressure simultaneously to at least one cutting edge 68 of the die 60. *See, e.g.*, paragraph [0041].

Independent claim 62 of the '852 Application also recites a die 60 forming a pattern 102 in a sheet 100 of material. Such a die 60 includes a plate 62 and at least one cutting edge 68 protruding from a surface 66 of the plate. *See, e.g.*, paragraph [0030]. The plate 62 is substantially planar, portable, and configured for use with a portable press 10, 10', 210. *See, e.g.*, paragraphs [0016] and [0030]. In this regard, the thickness or rigidity of the plate 62 may be sufficient to maintain planarity when the die 60 is unsupported. The plate 62 may also be configured to apply pressure simultaneously to at least one cutting edge 68 of the die 60. *See, e.g.*, paragraph [0041].

As recited in claims 71-74, which depend from independent claim 62, the plate 62 may have a peripheral edge 61a, 61b with a dimension of, at most, about two inches. Paragraph [0037].

The plate 62 may also be configured to apply pressure simultaneously to at least one cutting edge 68 of the die 60, as recited in claim 77, which depends from independent claim 62. *See, e.g.*, paragraph [0041].

(6) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

(A) The rejection of claims 64-68 and 70 under 35 U.S.C. § 112, second paragraph, for various informalities;

(B) The rejection of claims 48, 61, 62, 68, 75, and 77 under 35 U.S.C. § 102(b) for being drawn to subject matter that is allegedly anticipated by the subject matter described in U.S. Patent 3,469,488 to Gaspari (hereinafter “Gaspari”);

(C) The rejection of claims 48, 61-67, and 77 under 35 U.S.C. § 102(b) for reciting subject matter that is purportedly anticipated by the disclosure of U.S. Patent 5,172,622 to Sabin (hereinafter “Sabin”);

(D) The rejection of claims 48, 61, 62, 68-70, 75, and 76 under 35 U.S.C. § 102(b) for being directed to subject matter that is assertedly anticipated by the subject matter described in U.S. Patent 4,537,588 to Ehlscheid et al. (hereinafter “Ehlscheid”); and

(E) The 35 U.S.C. § 103(a) rejection of claims 71-74 for reciting subject matter that is allegedly unpatentable over teachings from either Gaspari or Ehlscheid.

(7) ARGUMENT

A. REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claims 64-68 and 70 have been rejected under 35 U.S.C. § 112, second paragraph, for various informalities.

It is clear from the language of claim 64 that the support recited therein is not necessarily the same as the substantially rigid support recited in claim 63. Therefore, claim 64 complies with the definiteness requirement of the second paragraph of 35 U.S.C. § 112.

With respect to claims 65 and 70, it is noted that there are typographical errors and antecedent basis issues in these claims that may be addressed in the future. In any event, independent claim 62 from which claims 65 and 70 depend, should recite that the edge protrudes

from the front side of the substantially planar plate, rather than from the front side of a “substantially planar die supporting surface,” while it is evident that “said surface” referred to in claims 65 and 70 is the “front side” of independent claim 62.

It is likewise evident that the recitation of “said surface” in claim 68 is the “front side” of independent claim 62. Additionally, it is noted that “said distance” should be replaced with “a distance” when the ‘852 Application reenters prosecution.

B. REJECTIONS UNDER 35 U.S.C. § 102(b)

1. APPLICABLE LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

2. ART RELIED UPON

Gaspari

Gaspari describes, among other things, a thick, molded plastic die 10 including a base 11 with integral cutting ridges 14, 14a protruding from the surface thereof. FIGs. 1 and 2; col. 3, line 71, to col. 4, line 22. Overall, the thickness of the die 10 is a quarter of an inch, with the base 11 making up the majority (over two-thirds) of that thickness. Col. 4, lines 12-22. This thick base 11 is required so that the force applied against the back side of the die is uniformly

distributed over the entire cutting surface of the die. Col. 4, lines 29-31. Although Gaspari notes that the thickness of the die may be irrelevant, that is only the case where at least the cutting edge of the die is “attached to a harder, more rigid support backing.” Col. 4, lines 23-29.

Sabin

The die element 12 of the table-top die cutting apparatus 10 described in Sabin includes a body 30 with “at least two flat, upstanding sides . . .” Col. 3, lines 40-45. A cutting edge 32 protrudes from the body 30. Col. 3, lines 45-46.

Ehlscheid

Ehlscheid describes a die which is configured to be used on a rotary press. The die of Ehlscheid has a curvature which facilitates securing of the die to a partially cylindrical drum. The drum is part of a rotary press, which, as is well known in the art, is a heavy piece of industrial equipment, typically weighing several hundred pounds. In addition to being curved, the die of Ehlscheid includes opposite edges that are bent toward one another. FIG. 2; col. 3, lines 38-41. These inwardly bent edges are configured to be engaged by corresponding features of the drum and, thus, facilitate securing of the die to the drum. Col. 3, lines 39-44. The curvature and the bent edges of the die guarantee that the die is accurately clamped to the drum and that the holes in the die register with corresponding holes in the drum. Col. 3, lines 38-44. In addition to the bent edges, screws and clamps secure the die of Ehlscheid to a drum. *Id.*; col. 4, lines 13-21.

Holes are formed within the confines of the cutting edges of the die described in Ehlscheid so that a vacuum may be applied to paper to hold the same in place relative to the die and a drum by which the die is carried during cutting. Col. 4, lines 22-30. Such holes are necessary because it is not desirable for a cutout to be immediately ejected from the die once a sheet of material has been cut. The holes in the die also facilitate the application of a positive pressure to a cutout piece of paper to remove the same from the die at a desired point in time following cutting. Col. 4, lines 27-30.

The die described in Ehlscheid has a total thickness of 0.5 mm, which is equal to 20 mils, or 0.02 inch. Col. 3, lines 19-21. The heights of the cutting edges of the die are 0.3 mm, which is equal to 12 mils, or 0.012 inch. Col. 3, lines 30-32. The backing of the die disclosed in Ehlscheid has a thickness of 0.2 mm, which is equal to 8 mils or 0.008 inch. Col. 3, lines 25-27.

3. ANALYSIS

Claims 48, 61-70, and 75-77 stand finally rejected under 35 U.S.C. § 102(b).

a. GASPARI

Claims 48, 61, 62, 68, 75, and 77 stand finally rejected under 35 U.S.C. § 102(b) for being drawn to subject matter that is allegedly anticipated by the subject matter described in Gaspari.

Independent claim 48 is directed to a die for forming patterns in a sheet of material. The die of independent claim 48 includes a portable, substantially rigid, substantially planar plate, as well as at least one cutting edge protruding from a surface of the substantially planar plate.

While the die 10 of Gaspari includes a thick base 11 or a support backing to provide it with sufficient rigidity (col. 4, lines 23-31), it is evident that, due to formation of the die 10 from plastic, the base 11 must be sufficiently thick to provide the desired amount of rigidity (*i.e.*, sufficient rigidity that the “force applied against [the die] is uniformly distributed over the entire cutting surface of the die.” Col. 4, lines 29-31).

Further, the only die thickness disclosed in Gaspari is a quarter of an inch, which, in view of the relatively small lateral dimensions and rigidity of the disclosed die, could hardly be considered to be “substantially planar.”

Therefore, it is respectfully submitted that Gaspari lacks any express or inherent description of a die that includes a “substantially planar” plate, as would be required for the disclosure of Gaspari to anticipate each and every element of independent claim 48 under 35 U.S.C. § 102(b).

Claim 61 is allowable, among other reasons, for depending from claim 48, which is allowable.

With respect to the die recited in independent claim 62, it is again noted that Gaspari does not expressly or inherently describe a die with a “substantially planar” plate.

Moreover, Gaspari does not expressly or inherently describe that the die 10 thereof includes “a back side configured to be supported by a substantially planar die supporting surface of a press . . .” (emphasis supplied). Nothing about the apparatus illustrated in FIG. 5 of Gaspari appears to be portable.

In view of the foregoing, it is respectfully submitted that Gaspari does not anticipate each and every element of independent claim 62, as would be required to affirm the 35 U.S.C. § 102(b) rejection of that claim.

Claims 68, 75, and 77 are each allowable, among other reasons, for depending from claim 62, which is allowable.

Claim 68 is additionally allowable since Gaspari neither expressly nor inherently describes that the cutting ridges 14, 14a of the die 10 disclosed therein protrude from a surface of the base 11 of that die 10 a distance that is greater than the thickness of the base 11. Instead, the disclosure of Gaspari is limited to a die 10 with a base 11 that has a thickness of 0.17 inch and cutting ridges 14, 14a that protrude a much shorter distance, 0.08 inch, from the base 11.

b. SABIN

Claims 48, 61-67, and 77 have been finally rejected under 35 U.S.C. § 102(b) for reciting subject matter that is purportedly anticipated by the disclosure of Sabin.

The die 12 described in Sabin includes a body 30 with “at least two flat, upstanding sides . . .” *See, e.g.*, col. 3, lines 40-54. As the sides of the body 30 of the die 12 are upstanding, it is evident that the die itself could not include a “substantially planar” plate, as would be required for the disclosure of Sabin to anticipate each and every element of independent claims 48 and 62.

Furthermore, Sabin does not expressly or inherently describe that the press disclosed therein is portable or, thus, that the dies that may be used with that press include back sides that

are configured to be supported by a corresponding surface of a portable press, as required by independent claim 62.

Therefore, the disclosure of Sabin does not anticipate each and every element of either independent claim 48 or independent claim 62.

Claim 61 is allowable, among other reasons, for depending from claim 48, which is allowable.

Each of claims 63-67 and 77 is allowable, among other reasons, for depending from claim 62, which is allowable.

c. **EHLSCHEID**

Claims 48, 61, 62, 68-70, 75, and 76 are finally rejected under 35 U.S.C. § 102(b) for being directed to subject matter that is assertedly anticipated by the subject matter described in Ehlscheid.

Notably, dies that are configured for use in rotary presses, such as that disclosed in Ehlscheid, have thin, chemically etched configurations that are not configured to be used by individual consumers. Because the backings of such dies are flexible and, thus, relatively thin (*e.g.*, the backing of the Ehlscheid die is only 0.2 mm, or 8 mils thick), the edges of the backings of such dies are razor sharp. Consequently, such dies tend to cut even the fingers of industrial handlers who have been trained to secure such dies to and remove them from rotary presses.

As the disclosure of Ehlscheid is limited to flexible dies for use with rotary presses, Ehlscheid lacks any express or inherent description of a die that includes a substantially rigid.

Moreover, the die of Ehlscheid does not include a substantially planar plate. Rather, the plate of that die has a curvature and is bent to include two inwardly extending edges. FIG. 2; col. 3, lines 38-41.

Thus, Ehlscheid does not anticipate each and every element of independent claim 48, as would be required to affirm the 35 U.S.C. § 102(b) rejection of that claim.

Claim 61 is allowable, among other reasons, for depending from claim 48, which is allowable. Claim 61 is additionally allowable because, in view of Ehlscheid's limited disclosure that the die thereof is configured for use with an industrial rotary press, it is apparent that all regions of the backside of that die are not concurrently and completely supported "by a substantially planar surface as pressure is simultaneously applied to all of [the] cutting edge" of that die. Instead, Ehlscheid merely discloses that the die is configured to be supported by a curved surface, and that pressure is only applied linearly across the die and, thus, to only portions of a cutting edge at any point in time.

With respect to the subject matter recited in independent claim 62, it is respectfully submitted that the disclosure of Ehlscheid is limited to dies that are configured for use with industrial rotary presses, not for use with portable pressures. Thus, Ehlscheid includes no express or inherent description of a die that includes a back side configured to be supported by a substantially planar die supporting surface of a portable press. Further, since the die of Ehlscheid is flexible, it does not include a plate with "a thickness [to] maintain its substantial planarity

when not supported . . .” Therefore, under 35 U.S.C. § 102(b), the disclosure of Ehlscheid does not anticipate each and every element of independent claim 62.

Each of claims 68-70, 75, and 76 is allowable, among other reasons, for depending from claim 62, which is allowable.

Claim 75 is additionally allowable since Ehlscheid does not expressly or inherently describe that the die thereof has dimensions that facilitate compact and portable storage thereof. Again, the die of Ehlscheid is relatively large and configured for industrial use.

Reversal of the 35 U.S.C. § 102(b) rejections of claims 48, 61-70, and 75-77 is respectfully requested, as is the allowance of each of these claims.

C. REJECTIONS UNDER 35 U.S.C. § 103(a)

1. APPLICABLE LAW

The standard for affirming a rejection under 35 U.S.C. § 103(a) is set forth in M.P.E.P. § 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Secondary considerations of nonobviousness include “commercial success, long felt but unsolved needs, failure of others, etc.” M.P.E.P. § 2141, quoting *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

2. ANALYSIS

Claims 71-74 stand finally rejected under 35 U.S.C. § 103(a) for being directed to subject matter that is allegedly unpatentable over teachings from either Gaspari or Ehlscheid.

Each of claims 71-74 is allowable, among other reasons, for depending from claim 62, which is allowable.

Moreover, it is respectfully submitted that there are at least two reasons that a *prima facie* case of obviousness has not been established against any of claims 71-74.

First, it is respectfully submitted that neither Gaspari nor Ehlscheid teaches or suggests the dimensions recited in any of these claims.

Second, in view of the fact that Gaspari and Ehlscheid both lack any teaching or suggestion that the dies thereof may be used with portable presses, it is respectfully submitted that one of ordinary skill in the art wouldn't have been motivated to develop dies with the dimensions recited in any of claims 71-74.

Furthermore, the Declaration of Eric J. Ruff that was filed in the '852 Application on August 2, 2004, identifies several reasons that dies having the dimensions recited in each of claims 71-74 would have been non-obvious as of the date to which a claim for priority has been made in the above-referenced application.

It is respectfully requested that the 35 U.S.C. § 103(a) rejections of claims 71-74 be withdrawn and that each of these claims be allowed.

(8) CLAIMS APPENDIX

A listing of claims 48 and 61-77 is attached as the CLAIMS APPENDIX to this APPEAL BRIEF.

(9) EVIDENCE APPENDIX

A copy of the Declaration of Eric J. Ruff, which was filed in the '852 Application on August 2, 2004, is enclosed as an EVIDENCE APPENDIX to this APPEAL BRIEF.

(10) RELATED PROCEEDINGS APPENDIX

There is no RELATED PROCEEDINGS APPENDIX to this APPEAL BRIEF.

(11) CONCLUSION

It is respectfully submitted that:

(A) The rejections of claims 64-68 and 70 under 35 U.S.C. § 112, second paragraph, for various informalities will be addressed at a later date;

(B) Claims 48, 61, 62, 68, 75, and 77 are allowable under 35 U.S.C. § 102(b) for being drawn to subject matter that is not anticipated by the subject matter described in Gaspari;

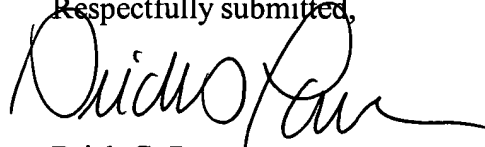
(C) Claims 48, 61-67, and 77 are allowable under 35 U.S.C. § 102(b) for reciting subject matter that is patentable over the subject matter disclosed in Sabin;

(D) Claims 48, 61, 62, 68-70, 75, and 76 recite subject matter that, under 35 U.S.C. § 102(b), is allowable over the subject matter described in Ehlscheid; and

(E) Claims 71-74 are each allowable under 35 U.S.C. § 103(a) for being drawn to subject matter that is patentable over the teachings of both Gaspari and Ehlscheid.

Accordingly, reversal of the rejections of claims 48, 61-68, and 70-77 is respectfully solicited, as is the allowance of each of these claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brick G. Power", written over the typed name.

Brick G. Power
Registration No. 38,581
Attorney for Applicants
TRASKBRITT, PC
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: December 22, 2006

BGP/lmh

Document in ProLaw

CLAIMS APPENDIX

48. A die for forming patterns from a sheet of material, comprising:
a portable, substantially rigid, substantially planar plate;
at least one cutting edge protruding from a surface of said substantially planar plate.

61. The die of claim 48, wherein all regions of a back side of said portable, substantially rigid, substantially planar plate located opposite said at least one cutting edge are configured to be concurrently and completely supported by a substantially planar surface of a portable die cutting apparatus as pressure is simultaneously applied to all of said at least one cutting edge.

62. A die for forming patterns from a sheet of material, comprising:
a substantially planar plate including a back side configured to be supported by a substantially planar die supporting surface of a portable press, said substantially planar plate having a thickness to maintain its substantial planarity when not supported by said substantially planar die supporting surface; and
a cutting edge protruding from a front side of said substantially planar plate, said cutting edge being configured cut through the sheet of material as pressure is applied to said back side of said substantially planar plate.

63. The die of claim 62, wherein said cutting edge is configured to cut through the sheet of material as said cutting edge is forced against a substantially rigid support.

64. The die of claim 63, wherein said cutting edge is configured to cut through the sheet of material as said cutting edge is forced against a support formed from a material that is softer than the material from which the cutting edge is formed.

65. The die of claim 62, further comprising:
at least one ejection element associated with said surface of said substantially planar plate, said at least one ejection element being configured to immediately force a sheet of material from a location laterally adjacent to the at least one cutting edge upon removal or pressure from the die.

66. The die of claim 65, wherein said at least one ejection element comprises at least one compressible, resilient member.

67. The die of claim 65, wherein at least a portion of said at least one ejection element is positioned within a periphery defined by said at least one cutting edge.

68. The die of claim 62, wherein said distance said at least one cutting edge protrudes from said surface of said substantially planar plate is greater than a thickness of said substantially planar plate.

70. The die of claim 62, wherein said at least one cutting edge protrudes from said surface of said substantially planar plate a distance of about 0.015 inch to about 0.02 inch.

71. The die of claim 62, wherein at least one peripheral dimension of said substantially planar plate is at most about 2 inches.

72. The die of claim 71, wherein said substantially planar plate is rectangular in shape and has peripheral dimensions of at most about 2 inches by about 2 inches.

73. The die of claim 62, wherein at least one peripheral dimension of said substantially planar plate is about 2 inches.

74. The die of claim 73, wherein said substantially planar plate has peripheral dimensions of about 2 inches by about 2 inches.

75. The die of claim 62, wherein said substantially planar plate has dimensions which facilitate compact and portable storage thereof with a plurality of other similarly dimensioned dies.

76. The die of claim 62, wherein said substantially planar plate comprises at least one of a magnetic material and a material which is attractable to a magnetic field.

77. The die of claim 62, wherein all regions of a back side of said portable, substantially rigid, substantially planar plate located opposite said at least one cutting edge are configured to be concurrently and completely supported by a substantially planar surface of a portable die cutting apparatus.

EVIDENCE APPENDIX

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THE PATENT & TRADEMARK OFFICE MAILROOM DATE
STAMPED HEREON IS AN ACKNOWLEDGEMENT THAT ON THIS
DATE THE PATENT & TRADEMARK OFFICE RECEIVED:

Transmittal Form (in duplicate); Fee Transmittal Form (1 page); Check
No. 6437 in the amount of \$464.00 for additional claims; Amendment in
response to Office Action dated May 24, 2004 (22 pages); and Declaration
of Eric J. Ruff (4 pages) Exhibit A (4 pages) Exhibit B (4 pages) Exhibit C
(2 pages).

Invention: DIE CUTTING SYSTEM, COMPONENTS THEREOF
AND METHODS
Applicant(s): Hixon et al.
Filing Date: November 20, 2003
Serial No.: 10/718,852
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Docket No.: 2916-4842.1US
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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Hixon et al.

Serial No.: 10/718,852

Filed: November 20, 2003

**For: DIE CUTTING SYSTEM,
COMPONENTS THEREOF, AND
METHODS**

Confirmation No.: 1905

Examiner: S. Choi

Group Art Unit: 3724

Attorney Docket No.: 2916-4842.1US

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DECLARATION OF ERIC J. RUFF

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Sir:

I, Eric J. Ruff, declare that:

- 1. I am over twenty-one years of age and competent to give sworn testimony.**
- 2. I am the President and C.E.O. of QuicKutz, Inc., (hereinafter "QuicKutz") a corporation organized under the laws of the State of Utah. I have served in that capacity at QuicKutz since its organization on September 5, 2001.**

3. U.S. Patent Application Serial No. 10/718,852 (hereinafter the '852 Application) has been assigned to QuicKutz, the assignment having been recorded with the U.S. Patent & Trademark Office at Reel No. 013271, Frame No. 0566.

Commercial Success

4. In 2002, QuicKutz released to the U.S. market a portable personal die cutting system using substantially rigid chemically etched dies of the type recited in the claims of the '852 Application.
5. In 2002, QuicKutz's first full year of operation, approximately \$236,000 was expended on advertising, which included advertising for its chemically etched dies. The advertising included printed advertisements in scrapbooking publications, a printed catalog that was made available in retail stores that sold QuicKutz products, development of a website, updates and maintenance to the website, and expenses associated with trade shows. Extensive word-of-mouth advertising, at no cost to QuicKutz, also occurred during 2002.
6. Between May 1, 2002, and December 31, 2002, QuicKutz sold approximately 439,000 dies of the type recited in the claims of the '852 Application. This sales volume amounted to approximately \$1,917,000 in gross revenues for QuicKutz during 2002, not including die cutting tools that were sold for use with the dies. (In 2002, most of QuicKutz's die cutting tools were sold in kits that included a set of dies, and the \$1,917,000 figure involves an allocation of the purchase price of such kits between the tool and the dies.)
7. Total revenues during 2002 that were attributable to QuicKutz's portable personal die cutting tools and the dies designed for use therewith amounted to approximately \$2,381,000, representing approximately a 10x return on QuicKutz's 2002 investment in advertising.
8. QuicKutz spent approximately \$199,000 on advertising in 2003. Again, such advertising included expenses relating to trade shows, updates to and maintenance of QuicKutz's website, catalogs, and printed advertisements in scrapbooking magazines. Again, extensive word-of-mouth advertising, at no cost to QuicKutz, occurred during 2003.
9. In 2003, QuicKutz sold approximately 2,127,000 dies of the type recited in the claims of the '852 Application, which amounted to gross sales of approximately \$7,449,000, not including die cutting tools that were sold for use with the dies. (Again, many tools were sold in kits, and the \$7,449,000 figure involves an allocation of the purchase price of such kits between the tool and the dies included therein.)

10. Total revenues during 2003 that were attributable to QuicKutz's portable personal die cutting tools and the dies designed for use therewith amounted to approximately \$8,907,000, representing approximately a 45x return on QuicKutz's 2003 investment in advertising.
11. Through June 30, 2004, QuicKutz has spent approximately \$301,000 on advertising, including expenses relating to trade shows, printing costs for new catalogs, costs associated with advertisements in scrapbooking magazines, and continued updates to and QuicKutz's website. Extensive word-of-mouth advertising, at no cost to QuicKutz, has also occurred during 2004.
12. During the first six months of 2004, QuicKutz sold approximately 1,705,000 of its dies of the type recited in the claims of the '852 Application. Its gross sales of dies amounted to approximately \$4,795,000, not including sales from tools that were sold for use with the dies.
13. Total revenues during the first six months of 2004 that were attributable to QuicKutz's portable personal die cutting tools and the dies designed for use therewith amounted to approximately \$5,328,000, representing approximately an 18x return on QuicKutz's 2004 investment in advertising.
14. These numbers show the commercial success of dies that fall within the scope of the claims of the '852 Application. Sales figures including tool sales are considered to be indicative of the commercial success of QuicKutz's rigid chemically etched dies, because all of QuicKutz's advertising has promoted both its dies and the portable personal die cutting system in which they are used.

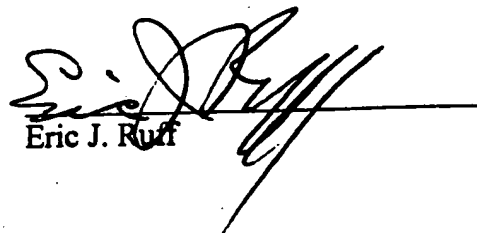
Long-Felt Need

15. Shortly after QuicKutz introduced its portable personal die cutting system into the market, many customers and commentators observed that the QuicKutz dies uniquely satisfied a need that had not previously been met in the scrapbooking industry. The attached Exhibit A is a sampling of magazine articles to that effect, including (i) an announcement/review printed in the November/December 2002 issue of *Memory Makers* magazine, observing that the QuicKutz dies make possible "more intricate, cleaner design cuts;" (ii) a review printed in the April/May 2003 issue of *PaperKuts* magazine noting the solid demand for die cuts and stating that the QuicKutz dies deliver "the sharp, crisp look of store cut dies" in a personal die cutting system that can be used "in the comfort of your own home"; (iii) an article in the 2003 issue of *Scrapbooking Top 50*, published by Memory Makers, highlighting the portability advantages of the QuicKutz dies by implying that 80 of them weigh about a pound.

16. Shortly after QuicKutz introduced its substantially rigid chemically etched dies into the market, several competitors began offering similar dies as well as die cutting tools that could use such dies.
17. In the fall of 2003, Sizzix, a joint venture between Ellison Educational Equipment, Inc., and Provo Craft and Novelty Inc., began selling an adapter for its portable die cutting tool that permitted the Sizzix tool to use rigid substantially planar dies similar to those described in the '852 Application. The attached Exhibit B is a print-out of one of Sizzix's Internet web pages, advertising the desirability of a portable personal die cutting system that uses rigid substantially planar dies.
18. A month or two later, a company known as DayCo, which has since been acquired by AccuCut Systems, began selling a portable die cutting tool, including an adapter that allows the AccuCut tool to use rigid substantially planar dies similar to those described in the '852 Application. The attached Exhibit C is a print-out of one of AccuCut's Internet web pages, advertising the desirability of a portable personal die cutting system, including the ability to use rigid "wafer-thin" dies.
19. These facts indicate the existence of a long-felt and continuing need in the scrapbooking, hobby, and related industries for a personal die cutting system that uses dies of a type described in the claims of the '852 Application.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 30th day of July, 2004.


Eric J. Ruff

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